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To: California City Officials

From: Bill Higgins[1]
Legislative Representative
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Date: September 19, 2008

RE: Technical Overview of SB 375 (v 1.1)[2]

I. Introduction

SB 375, by Senator Darrell Steinberg, builds on the existing regional transportation planning process (which is overseen by local elected officials with land use responsibilities) to connect the reduction of greenhouse gas (GhG) emissions from cars and light trucks to land use and transportation policy. In 2006, the Legislature passed AB 32—The Global Warming Solutions Act of 2006,—which requires the State of California to reduce GhG emissions to 1990 levels no later than 2020. According to the California Air Resources Board (CARB), in 1990 greenhouse gas emissions from automobiles and light trucks were 108 million metric tons, but by 2004 these emissions had increased to 135 million metric tons. SB 375 asserts that "Without improved land use and transportation policy, California will not be able to achieve the goals of AB 32."[3]

AB 32 set the stage for SB 375—or at least something like it. The issue was not "if" land use and transportation policy were going to be connected to reducing greenhouse gas emissions but "how" and "when." The issue was not "if" a governmental entity would regulate the car and light truck sector in order to reduce greenhouse gas emissions – the CARB already has that authority under AB 32 – but "how" and "when."

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[1] *Acknowledgement*. The author acknowledges and is grateful for the very significant contributions of the League's special counsel, Betsy Strauss, in preparing this document

[2] *Work in Progress Disclaimer*. This memorandum is a work in progress; it is not and should not be considered legal advice. It represents our best thinking to date on the scope and major implementation issues related to SB 375. As additional information becomes available, we will update this document. Readers who are aware of issues not addressed here, identify inadvertent errors, or want to make additional comments, should contact Bill Higgins at higginsb@cacities.org or 916/658-8250)

[3] See SB 375 (2008), Section 1(c) [uncodified]

Accordingly, SB 375 has three goals: (1) to use the regional transportation planning process to help achieve AB 32 goals; (2) to use CEQA streamlining as an incentive to encourage residential projects which help achieve AB 32 goals to reduce Greenhouse Gas emissions (GhGs); and (3) to coordinate the regional housing needs allocation process with the regional transportation planning process.

To be sure, the League remains fundamentally concerned about the keeping the line as bright as possible between regional planning and local land use authority. In the end, however, SB 375 answers the questions "how?" and "when?" by choosing regional agencies (controlled by cities and counties) rather than the CARB to lead the effort in this area; and by integrating RHNA with transportation planning to allow cities and counties to align existing mandatory housing element requirements with transportation funding. Those cities and counties that find the CEQA streamlining provisions attractive have the opportunity (but not the obligation) to align their planning decisions with the decisions of the region.

II. SB 375 in Context: AB 32, CARB, and Global Warming

AB 32 granted CARB broad authority over any "source" of GhG emissions.[4] The definition of "source" includes automobiles and light trucks,[5] which account for more than 30 percent of the state's GhG emissions. AB 32 authorizes the CARB to require "participation" in CARB's program to reduce greenhouse gas emissions and to "monitor compliance" with the statewide greenhouse gas emissions limit.[6]

SB 375 represents a "program" for the automobile and light truck sector.[7] It provides a means for achieving the AB 32 goals for cars and light trucks. This is important to understanding why the agreement on SB 375 was reached: SB 375 provides more certainty for local governments and developers by framing how AB 32's reduction goal from transportation planning for cars and light trucks will be established. It should be noted, however, that SB 375 does not prevent CARB from adopting additional regulations under its AB 32 authority.[8] (However, given the degree of consensus that emerged on SB 375, such actions should be politically difficult for CARB at least for the foreseeable future).

SB 375 requires the CARB to establish the GhG emission reduction targets for each region (as opposed to individual cities or households) and to review the region's

[4] Cal. Health & Safety Code § 38560

[5] Cal. Health & Safety Code § 38505(i)

[6] Cal. Health & Safety Code § 38562 and following

[7] Cal. Health & Safety Code § 38562.

[8] This is because the scope of authority granted to CARB to regulate any "source" of GHG emissions is very broad.

determination that its plan achieves those targets. Each Metropolitan Planning Organization (MPO) must include a sustainable communities strategy (SCS) in the regional transportation plan that seeks to achieve targeted reductions in GhG emissions from cars and light trucks if there is a feasible way to do so. CARB establishes the targets for each region in accordance with the following:

- *CARB must take other factors into account before setting target.* Before setting a reduction target for the reduction of GhGs from cars and light trucks, CARB must first consider the likely reductions that will result from actions to improve the fuel efficiency of the statewide fleet and regulations relating the carbon content of fuels (low carbon fuels). [9]

- *Targets are set regionally, not locally.* SB 375 assures that the target to reduce GhGs from cars and light trucks will be regional. (CARB has received many comments and suggestions on its Scoping Plan that it should adopt targets and enforce requirement on an agency-by-agency basis).

- *Committee to advise CARB.* A Regional Targets Advisory Committee, which includes representation from the League of California Cities, California State Association of Counties, metropolitan planning organizations, developers, planning organizations and other stakeholder groups, will advise the Board on how to set and enforce regional targets.

- *Exchange of technical information.* Before setting the targets for each region, CARB is required to exchange technical information with the MPO for that region and with the affected air district. The MPO may recommend a target for the region.

The CARB's role in SB 375 is limited. Although the CARB retains its broad grant of authority to act independently under AB 32, SB 375 provides the framework for reducing greenhouse gas emissions in the car and light truck sector through the tie between land use and transportation planning.

Moreover, SB 375 indirectly addresses another longstanding issue: single purpose state agencies. The League, among others, has argued that these agencies often fail to recognize other competing state goals enforced by a different state agency. SB 375 takes a first step to counter this problem by connecting the Regional Housing Needs Allocation (RHNA) to the transportation planning process. As a result, SB 375 will require CARB to look at how new climate regulations could affect state and regional transit and housing policies; likewise, Department of Housing and Community Development (HCD) will have to consider the effects of housing policy on state and regional efforts to address climate change.

[9] Cal. Gov't Code § 65080(b)(2)(A)(iii). Citations to language in SB 375 is to the section of the code as it proposed to be amended based on the August 22 version of SB 375 that was approved by the Assembly and concurred with by the Senate.

III. Planning for Greenhouse Gas Emission Reduction within the RTP

Regional transportation plans have long been a part of the transportation planning horizon in California. Federal law requires regional transportation plans (RTPs) to include a land use allocation and requires the metropolitan planning organizations that prepare RTPs to make a conformity finding that the Plan is consistent with the requirements of the federal Clean Air Act. Some regions have also engaged in a regional "blueprint" process to prepare the land use allocation.

1. The Sustainable Communities Strategy (SCS)

SB 375 integrates AB 32's goal to reduce GhG emissions into transportation planning by requiring that a sustainable communities strategy (SCS) be added to the RTP. SB 375 recognizes that, because of the constraints of federal law and inadequate funding for infrastructure and public transit, an SCS may not be able to achieve the region's targets. If the metropolitan planning organization (MPO) determines that the SCS cannot achieve the targets, then the MPO must develop an Alternative Planning Strategy (APS) (see discussion below). The biggest single difference is that the SCS is part of the RTP and the APS is not.

To fully understand what an SCS is—and is not—it's worth taking a step back and look at what is required in existing regional transportation plans. RTPs are regulated by a conglomeration of state and federal law. State law requires that an RTP include "clear, concise policy guidance to local and state officials" regarding transportation planning.[10] The federal law requires that RTPs, among other things, work toward achieving the goals of the Clean Air Act.

One important component of the RTP for federal purposes is an estimate of a likely or realistic development pattern for the region over the next 20 to 30 years. This estimate informs the decision-making process for transportation funding. The forecasted growth pattern must be based upon "current planning assumptions" to assure that the air conformity provisions are meaningful. Put another way, if the growth pattern is not realistic, then the accompanying policies to achieve air quality conformity relating to air pollutants from traffic are not likely to work. If the federal government determines that the projected growth development pattern is not realistic, it can withhold federal transportation funding.

Like the federal Clean Air Act, SB 375 requires the growth pattern in the SCS to be based upon the "most recent planning assumptions considering local general plans and other factors."[11] It also requires that the SCS be consistent with the federal regulations that require a realistic growth development pattern. In addition, the SCS must consider or address several additional factors:

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[10] Cal. Gov't Code § 65080(a).

[11] Cal. Gov't Code § 65080)b)(2)(B).

- Consider the spheres of influence that have been adopted by the local agency formation commission (LAFCO).[12]

- Identify the general location of uses, residential densities, and building intensities within the region;

- Identify areas sufficient to house all economic segments the population of the region over the long term planning horizon of the RTP;

- Identify areas within the region sufficient to house an eight-year projection of the regional housing need for the region;

- Identify a transportation network to service the transportation needs of the region;

- Gather and consider the best practically available scientific information regarding resource areas and farmland in the region (note, there is no requirement to act on this information);

- *S*et a forecasted development pattern for the region, which, when integrated with the transportation network and other transportation measures and policies, will reduce the GhG emissions from automobiles and light trucks to achieve, if there is a feasible way to do so, the GhG emission reduction targets approved by the state board: and

- Quantify the reduction in GhG emissions projected to be achieved by the SCS and, if the SCS does not achieve the targeted reductions in greenhouse gas emissions, set forth the difference between the amount that the SCS would reduce GHG emissions and the target for the region.[13]

Of all these requirements, the one that has generated the most concern to date is the requirement that the RTP include a development pattern which, if implemented, would achieve the GHG emissions targets if there is a feasible way to do so. It is important to emphasize that this development pattern must comply with federal law, which requires that any pattern be based upon "current planning assumptions" that include the information in local general plans and sphere of influence boundaries. If a certain type of development pattern is unlikely to emerge from local decision-making, it will be difficult for the regional agency to say that it reflects current planning assumptions.

In addition, the SCS will not directly affect local land use decisions. The SCS does not in any way supersede a local general plan, local specific plan, or local zoning. SB 375 does

[12] Cal. Gov't Code § 65080(b)(2)(F).

[13] Cal. Gov't Code § 65080(b)(2)(G).

not require that a local general plan, local specific plan, or local zoning be consistent with the SCS.[14]

2. The Alternative Planning Strategy (APS)

In the case where the SCS does not achieve the GhG emission reduction target, the MPO must develop an Alternative Planning Strategy (APS).[15] The APS is a separate document from the RTP[16] and therefore does not automatically affect the distribution of transportation funding. The APS must identify the principal impediments to achieving the targets within the SCS. The APS must also include a number of measures—such as alternative development patterns,[17] infrastructure, or additional transportation measures or policies—that, taken together, would achieve the regional target.

The APS must describe how the GHG emission reduction targets would be achieved and why the development pattern, measures, and policies in the APS are the most practicable choices for the achievement of the GHG targets. Like the SCS the APS does not directly affect or supersede local land use decisions; nor does it require that a local general plan, local specific plan, or local zoning be consistent with the APS.[18]

In addition, SB 375 provides that the APS does not constitute a land use plan, policy, or regulation and that the inconsistency of a project with an APS is not a consideration in determining whether a project may be deemed to have an environmental effect for purposes of the California Environmental Quality Act (CEQA).

Some have asked about the purpose of the APS: Why should an MPO spend the time to develop an alternative planning strategy if there is no requirement to actually implement it? The answer is two-fold. First, a general consistency with a CARB approved plan—whether it's an SCS or APS—allows projects to qualify for the CEQA streamlining provisions in the bill (see Part IV, below). Second, it adds a new focus for the regional transportation planning and housing allocation: reductions in GhG emissions.

3. CARB's Role in the Approval of the SCS or APS

CARB's role in reviewing the SCS or APS is very limited. It can only accept or reject the MPO's determination that the plan would, if implemented, achieve the regional GHG

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[14] The CEQA changes made by the bill require residential projects to be consistent with the SCS in order to take advantage of streamlined CEQA processing.

[15] Cal. Gov't Code § 65080(b)(2)(H).

[16] Government Code 65080(b)(2)(H).

[17] The development pattern must still comply with the provisions of the SCS that require consistency with the RHNA distribution and other factors.

[18] The CEQA changes made by the bill require residential projects to be consistent with the APS in order to take advantage of streamlined CEQA processing.

emission reduction target established by CARB.[19] CARB must complete its review within 60 days. It may not issue conditional approvals or otherwise interfere in any way with local decision-making.

In addition, the process is designed so that there will be an extended exchange of information between the MPO and CARB about the technical methodology that the region intends to use to estimate the GHG emissions reduction. SB 375 encourages the MPO to work with CARB until it concludes that the technical methodology it intends to use operates accurately. CARB must respond to such consultations in a timely manner. This type of communication before the actual submission should reduce the chance that CARB will find a particular plan does not achieve the regional target.

4. Setting the Regional Target for GhG Emissions

There are two questions relevant to setting the regional targets. The first is: How much of the overall AB 32-imposed reduction will be required from transportation planning for cars and light trucks statewide? This amount will be set by CARB in the AB 32 Scoping Plan, which assigns reduction targets for the 2020 goal on a sector-by-sector basis and lays the framework for achieving that goal.

In the early draft of the Scoping Plan released in June 2008, CARB called for a reduction of 2 million metric tons of GhG statewide (out of a total of 169 million metric tons needed to achieve AB 32's 2020 target).[20] This amounts to approximately 1.2 percent of the total reductions. This number is likely to go up in the final Scoping Plan, but should remain small in proportion to total amount of GhGs generated by cars and light trucks (at least for the 2020 target).

Once the statewide target is set, the second question is: How will it be assigned to the individual regions? SB 375 requires CARB to set regional targets by September 30, 2010 (draft targets will be released to the regions by June 30).[21] The target may be expressed in gross tons, tons per capita, tons per household, or in any other metric deemed appropriate by the state board.

To assist in this process, the CARB's board appoints a Regional Targets Advisory Committee to recommend factors and methodologies to be used for setting these targets.[22] The committee is made up of representatives from the League of California Cities, California State Association of Counties, MPOs, affected air districts, planners, homebuilders, affordable housing organizations, environmental justices organizations, and others. The committee will make its report to CARB by September 30, 2009.

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[19] See 65080(b)(2)(I)(ii).

[20] See California Air Resources Board, Climate Change Draft Scoping Plan (June 2008 Discussion Draft), pages 11 and 33.

[21] Cal. Gov't Code § 65080(b)(2)(A).

[22] Cal. Gov't Code § 65080(b)(2)(A)(i)

In addition, prior to setting the target for the region, CARB must exchange technical information with the MPO and affected air district. The MPO may also recommend its own target for the region. The MPO must hold at least one public workshop within the region after receipt of the report from the Advisory Committee. CARB shall release draft targets for each region no later than June 30, 2010. In setting these targets, CARB must first consider the GhG reductions that will be achieved from improved vehicles emission standards (overall fuel efficiency improvements), changes in fuel composition (such as low carbon fuels) and other measures that CARB has adopted to reduce GhGs from other emissions sources.[23]

Once set, the targets must be updated every 8 years, which is consistent with the new RHNA planning cycle and two RTP planning cycles in non-attainment areas. The board can also, at its discretion, revise the targets every four years based on changes in fuel efficiency, use of low carbon fuels, or other factors that CARB can take into account in setting the target.[24] Before revising or updating the regional targets, CARB must engage the primary stakeholders (Dept. of Transportations, MPOs, air districts, and local governments) in a consultative process.

5. What SB 375 means for transportation funding

SB 375 requires the RTP to be internally consistent much like the internal consistency requirement of a city or county's general plan. This means that the "action element" and the "financial element" of the RTP must be consistent with the SCS, since the SCS is part of the RTP. (The "action element" and the "financial element" of the RTP, however, do not need to be consistent with the APS, since the APS is not part of the RTP.) This means that decisions about the allocation of transportation funds must be consistent with the SCS, its land use plan, and its transportation policies. The land use plan must be based upon the most recent planning assumptions. These are taken in part from local city and county general plans. As cities and counties use the CEQA streamlining in SB 375, their planning assumptions will align more closely with those in the SCS or APS, whichever CARB agrees would achieve the region's GhG target, if implemented.[25]

SB 375 makes explicit the authority that already exists in the law. MPOs already have authority to impose policies or condition transportation funding. The Metropolitan Transportation Commission, for example, does not fund certain types of transit projects

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[23] Cal. Gov't Code § 65080(b)(2)(A)(iii).

[24] 65080(b)(2)(A)(iv).

[25] This is because the CEQA streamlining should act to change some of the projects as they are proposed to be built by developers. Assuming that the CEQA streamlining is sufficient to motivate developers to propose projects that are consistent with the SCS or APS, this may impact the "current planning assumptions" for the region. Nothing requires local agencies to approve such proposals, but if local agencies indicate a willingness to support such proposals, the projected development pattern for the region will change accordingly.

unless they serve areas that meet minimum density standards.[26] Even without SB 375, MPOs were likely to take additional steps in the direction of adopting policies related to reducing GhG emissions within their RTPs planning because the California Transportation Commission recently amended its RTP Guidelines to require that MPOs consider GhG emissions as part of the RTP process.

It is worth noting that the decision-makers on the regional MPOs are made up wholly of local elected officials. Accordingly, MPOs are not likely to support measures that limit the discretion of cities and counties, particularly in those MPOs where every city and county in the region has a seat on the MPO board. Only two regions, SCAG and MTC, do not fit that model. SB 375 provides an exception for the SCAG region that allows for sub-regional development of the SCS and APS, where local representation is more broadly reflected.

6. How are Local Officials and the Public involved in Developing the SCS/APS

Once the region has its target, the question turns toward developing a regional plan to achieve GhG reductions. SB 375 requires the following public and local official participation processes before the plan can be adopted:

- *Local Elected Official Workshops.* MPOs must conduct at least two informational meetings in each county within the region for local elected officials (members of the board of supervisors and city councils) on the SCS and APS. The MPO may conduct only one informational meeting if it is attended by representatives representing the county and a majority of the cities representing a majority of the population in the incorporated areas of that county.
- *General Public Participation.* Each MPO must adopt a participation plan consistent with the requirements of the participation plan required by federal law that includes a broad range of stakeholder groups. These workshops must be sufficient to provide the public with a clear understanding of the issues and policy choices. At least one workshop shall be held in each county in the region. For counties with a population greater than 500,000, at least three workshops shall be held. Each workshop, to the extent practicable, shall include urban simulation computer modeling to create visual representations of the SCS and the alternative planning strategy. The MPO must also provide a process where members of the public can provide a single request to receive notices, information, and updates.
- *Circulation of Draft SCS/APS.* A draft of the SCS and APS must be circulated at least 55 days before the adoption of the RTP.
- *Public Hearings.* The MPO must hold at least three public hearings on the SCS and APS in multiple county regions, and two public hearings in single county regions. To the extent feasible, hearings should be in different parts of the region to maximize the opportunity for participation.

[26] See MTC Policy 3434 (www.mtc.ca.gov/planning/smart_growth/tod/TOD_policy.pdf)

7 Agencies and Regions Affected by SB 375

SB 375 applies to the 17 metropolitan planning organizations (MPOs) in the state. Together, these organizations cover 37 counties and represent almost 98 percent of the state's population.

These include four multiple county MPOs, including the Association of Monterey Bay Area Governments (AMBAG - Monterey, San Benito, and Santa Cruz counties), Metropolitan Transportation Commission (MTC - Alameda, Contra Costa, Solano, Marin, Napa, Sonoma, San Francisco, San Mateo, an Santa Clara counties), Sacramento Area Council of Governments (SACOG – Sacramento, Yolo, El Dorado, Placer, Yuba, and Sutter counties) and the Southern California Association of Governments (SCAG—Los Angeles, Ventura, San Bernardino, Riverside, Imperial, and Orange counties).

Affected single county MPOs include Butte, Fresno, Kern, Kings, Madera, San Diego, San Joaquin, San Luis Obispo, Santa Barbara, Shasta, Stanislaus, and Tulare counties.

8. Exempt transportation projects

Transportation projects funded by the MPO must be consistent with the SCS except that projects programmed for funding on or before December 31, 2011 are not required to be consistent if (1) they are contained in the 2007 or 2009 Federal Statewide Transportation Improvement Program; and (2) they are funded pursuant to Section 8879.20 of the Government Code; or (3) were specifically listed in a ballot measure prior to December 31, 2008 approving a sales tax measure for transportation purposes. In addition, a transportation sales tax authority need not change funding allocations approved by the voters for categories of transportation projects in a sales tax measure adopted prior to December 31 2010.

10. Exceptions for the SCAG region

SB 375 provides a special set of exceptions for the development of the SCS/APS within the region of the Southern California Association of Governments (SCAG)[27]. Here, a subregional council of governments and the county transportation commission may work together to propose a SCS or APS for the subregional area. Although SCAG may still address interregional issues in the SCS/APS, SCAG must include the subregional SCS or APS to the extent that it is consistent with the requirements of a regional transportation plan and federal law. SCAG is still responsible for creating an overall public participation plan, ensuring coordination, resolving conflicts and making sure that the plan complies with all applicable legal requirements.

[27] Cal. Gov't Code § 65080(b)(2)(C).

11. Special Provision for the Eight San Joaquin Valley MPOs

In order to encourage regional cooperation among the 8 counties in the San Joaquin Valley, SB 375 specifically encourages two or more counties to work together to develop cooperative policies and develop a multiregional SCS or APS.

12. MPOs in Attainment Areas and RTPAs Not Within an MPO

There are a few counties in the state that are actually in "attainment" for air quality purposes. Federal law requires that these regions update their RTPs at least every five years instead of every four years (the requirement for non-attainment MPOs). In addition, there are a number of other counties that are not included within an MPO at all. Given that SB 375 is based on a eight year cycle that includes one RHNA planning period and two RTP planning periods, the five year requirement would place attainment MPOs out of sync with the non-attainment MPOs.

SB 375 solves this by allowing attainment MPOs, or a regional transportation planning agency (RTPA) not within an MPO, to opt into an 8 year planning cycle.[28] In other words, they may maintain their status quo with a five-year RHNA planning cycle that may or may not be aligned with their RTP planning cycle. Or they may opt into the 8-year cycle upon meeting the following conditions:

- Opting to adopt a plan not less than every four years
- This election must be made prior to June 1, 2009 or at least 54 months prior to the deadline for the adoption of housing elements for jurisdictions within the region (in order to afford HCD with sufficient time to develop and distribute an 8 year number).
- Public hearing

13. Rural Sustainability

MPO or county transportation agency must consider financial incentives for cities and counties that have resource areas or farmland. The idea is that to the extent that SB 375 drives more transportation investments to existing urban areas, some consideration should be given to rural areas that nevertheless help address the emissions targets by not building. An MPO or county transportation agency shall also consider financial assistance for counties to address countywide service responsibilities in counties that contribute towards the GhG emissions reductions targets by implementing policies for growth to occur within their cities.

[28] Cal. Gov't Code § 65080(b)(2)(L).

IV. NEW CEQA EXEMPTIONS AND STREAMLINING

The EIR prepared for a RTP will consider the impact of the Plan on global warming and the growth-inducing impacts of the Plan. SB 375's CEQA incentive eliminates the requirement to analyze the impacts of certain residential projects on global warming and the growth-inducing impacts of those projects when the projects achieve the goals of reducing greenhouse gas emissions by their proximity to transit or by their consistency with the SCS or APS.

1. Two Types of CEQA Streamlining

SB 375 includes two types of CEQA streamlining. One is for residential projects that are consistent with the SCS (or APS) that CARB agrees is sufficient to achieve the GhG targets for the region if it was implemented.[29] The other is for Transportation Priority Projects (which also must be consistent with the SCS/APS). Each of these is discussed in more detail below.

2. Projects consistent with the SCS/APS

A residential or mixed-use project which is consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a SCS/APS is not required to reference, describe, or discuss (1) growth-inducing impacts; or (2) project specific or cumulative impacts from cars and light-duty truck trips on global warming or the regional transportation network if the project incorporates the mitigation measures required by an applicable prior environmental document.

In addition, an environmental impact report prepared for this type of project is not required to reference, describe, or discuss a reduced residential density alternative to address the effects of car and light-duty truck trips generated by the project.

3. Three Types of Streamlining for Transit Priority Projects

SB 375 amends CEQA in three ways for "transit priority projects" (or TPPs). A TPP is a new type of project created by SB 375 that must meet the three requirements: (1): contains at least 50% residential use; commercial use, if any, must have floor area ratio (FAR) of not less than 0.75; (2) have a minimum net density of 20 units per acre; and (3) be located within one-half mile of a major transit stop or high quality transit corridor included in a RTP.[30]

- *Total CEQA Exemption for a Sub-Set of TPPs.* A TPP is exempt from CEQA if it complies with a long list of criteria including the following:
  - Not more than 8 acres and not more than 200 residential units

[29] Cal. Gov't Code § 65080(b)(2)(I)

[30] "Major transit stop" is defined at Section 21064.3 of Public Resources Code and in SB 375 in Section 21155(b). "High quality transit corridor is defined in SB 375 in Section 21155(b).

- Can be served by existing utilities
- Does not have a significant effect on historical resources
- Buildings are 15% more energy efficient than required and buildings and landscaping is designed to achieve 25 percent less water usage
- Provides EITHER a minimum of 5 acres per 1,000 residents of open space, OR 20 % housing for moderate income, or 10% housing for low income, or 5% housing for very low income (or in lieu fees sufficient to result in the development of an equivalent amount of units). [31]

- *TPP: Sustainable Communities Environmental Assessment.* A TPP that does not qualify for a complete exemption from CEQA may nevertheless qualify for a sustainable communities environmental assessment (SCEA) if the project incorporates all feasible mitigation measures, performance standards, or criteria from prior applicable environmental impact reports. A SCEA is similar to a negative declaration in that the lead agency must find that all potentially significant or significant effects of the project have been identified, analyzed and mitigated to a level of insignificance. There are four significant differences:
  - Cumulative effects of the project that have been addressed and mitigated in prior environmental impacts need not be treated as cumulatively considerable.
  - Growth-inducing impacts of the project are not required to be referenced, described or discussed.
  - Project specific or cumulative impacts from cars and light duty truck trips on global warming or the regional transportation network need not be referenced described or discussed.

  A SCEA is reviewed under the "substantial evidence" standard. The intent of the author was to eliminate the "fair argument" test as the standard of review for a sustainable communities environmental assessment.

- *Transit Priority Projects – Traffic Mitigation Measures*. SB 375 also authorizes the adoption of traffic mitigation measures that apply to transit priority projects. These measures may include requirements for the installation of traffic control improvements, street or road improvements, transit passes for future residents, or other measures that will avoid or mitigate the traffic impacts of transit priority projects. A TPP does not need to comply with any additional mitigation measures for the traffic impacts of that project on streets, highways, intersections, or mass transit if traffic mitigation measures have been adopted.

[31] This is a partial listing of the criteria.

V. Changes to the Housing Element Law

Before SB 375, federal and state law ignored the fact that in most areas in California, regional transportation plans and regional housing allocation plans are prepared by the same regional organization. Conflicting deadlines policies have historically caused a disconnect between regional transportation planning and regional housing policy. SB 375 eliminate this disconnection by requiring the RTP to plan for the RHNA and by requiring the RHNA plan to be consistent with the projected development pattern used in the RTP.

This will make two significant changes in this regard. First, cities and counties in Clean Air Act non-attainment regions will have an 8-year planning period,[32] which means that the housing element must be updated every 8 years rather than every 5 years.

Second, cities' and counties' RHNA will change because consistency between the regional housing needs allocation plan and the RTP means that the concept of "fair share" will change. Under existing law, the COG adopts the regional housing allocation plan. The plan distributes to each city and to each county its fair share of the regional housing need.[33] Under SB 375 the plan must be consistent with the development pattern included in the SCS (although each jurisdiction still must receive an allocation).[34] In trying to encourage a growth development pattern for residential housing that would reduce GhGs, SB 375 had to address the potential conflicts with the existing RHNA and housing element goals and process.

1. Establishing an Eight Year Planning Period in Non-Attainment Regions

Local governments within a region classified as "non-attainment" under the Clean Air Act and local governments within a region that has elected[35] to adopt a regional transportation plan every four years are required to revise their housing element every eight years (instead of the current 5 years).[36] All other local governments remain on the five-year schedule (see "*12. MPOs in Attainment Areas and RTPAs Not Within an MPO*" on page 11).

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[32] SB 375 allows attainment regions to elect to prepare an RTP every four years which will then mean that cities and counties in that region to have an 8-year planning period.

[33] SB 375 changes the methodology that HCD uses to calculate the existing and projected regional need. This number must now reflect "the achievement of a feasible balance between jobs and housing within the region using the regional employment projects in the applicable regional transportation plan" Cal. Gov't Code § 65584.01(d).

[34] See Cal. Gov't Code § 65584.04(i)..

[35] Cal. Gov't Code § 65080(b)(2)(L).

[36] See Cal. Gov't Code §§ 65588(b). and (e)(7)

2. When the Eight Year Planning Period Starts

Local governments in non-attainment areas are required to adopt their fifth revision of the housing element no later than 18 months after the adoption of the first RTP adopted after September 30, 2010. Local governments that have elected to adopt the RTP every four years are required to adopt their next housing element 18 months after the adoption of the first regional transportation plan following the election. All local governments within SANDAG are required to adopt their fifth revision no more than 5 years from the fourth revision and their sixth revision no later than 18 months after adoption of the first RTP adopted after the fifth revision due date.

3. Timeline for RHNA Allocation and the Housing Element

In areas where the 8-year planning period applies, the MPO will allocate the RHNA number to the individual cities and counties at approximately the same time it adopts the RTP (which includes the requirement that the SCS must accommodate the 8 year RHNA allocation). Once the city receives its RHNA allocation, it has 18 months to prepare its housing element and submit it to the Department of Housing and Community Development (HCD).

All local governments within the jurisdiction of an MPO, except those within the San Diego Association of Governments, shall adopt its next housing element 18 months after adoption of the first RTP that is adopted after September 30, 2010.

4. Consequence of Failing to Submit a Timely Housing Element

Local agencies that fail to submit a housing element to HCD within the 18 month timeline fall out of the 8 year housing element cycle and must submit their housing element every four years to HCD.[37] These agencies must still complete their zoning within three years and 120 days of the deadline for adoption of the housing element of or be subject to the sanctions provision described below. [38]

5. Timeline to Re-Zone Sites to Meet RHNA Need

Each housing element includes an inventory that identifies sites to accommodate the jurisdiction's RHNA. Jurisdictions with an eight-year housing element must rezone sites to accommodate that portion of the RHNA not accommodated in the inventory no later than three years after the date the housing element is adopted or the date that is 90 days after receipt of the department's final comments, whichever is earlier.[39]

Rezoning of the sites includes adoption of minimum density and development standards. A local agency that cannot meet the 3-year requirement may be eligible for a 1-year

[37] Cal. Gov't Code § 65588(b)

[38] Cal. Gov't Code § 65583(c)(1)(A)

[39] Cal. Gov't Code § 65583(c)(1)(A).

extension if it can prove that it has completed 75 percent of its zoning requirement and was unable to rezone for one of the following reasons: (1) because of an action or inaction beyond the control of the local agency, (2) because of infrastructure deficiencies due to fiscal or regulatory restraints, (3) because it must undertake a major revision to its general plan in order to accommodate the housing related policies of an SCS or APS.[40]

6. Scheduling Actions Required by the Housing Element Program

Current law also requires a housing element to include a program of actions that the local agency intends to undertake during the planning period to encourage that the needs of all economic segments of the community will be met. SB 375 requires local agencies to develop a schedule and timeline for implementation as to when specific actions will have "beneficial impacts" within the planning period. [41]

7. Public Hearing for HCD Annual Report.

Local governments must now hold a public hearing and provide a annual report on the progress made during the year on the programs within the housing element. This requirement to make this report on an official form approved by HCD has been in the law since 1995, but has not been officially applicable because HCD has not yet finalized the form under the administrative rulemaking process[42].

8. Extension of Anti-NIMBY for Affordable Housing Projects

SB 375 extends a strict anti-NIMBY law protection (now called the Housing Accountability Act) for housing development projects, which are defined as projects where at least 49 percent of the units are affordable to families of lower- income households. [43](In most circumstances, a development that meets the 49 percent threshold is a development where 100 percent of the units are affordable to lower-income households.),

The new anti-NIMBY provision applies to an agency's failure to zone a site for low- and very low-income households within the three year time limit (four years if an agency qualifies for an extension). If an affordable project is proposed on that site and the project complies with applicable, objective general plan and zoning standards, including design review standards, then the agency may not disapprove the project, nor require a conditional use permit, planned unit development permit, or other discretionary permit, or impose a condition that would render the project infeasible, unless the project would have a specific, adverse impact upon the public health or safety and there is no feasible method to satisfactorily mitigate or avoid the adverse impact.

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[40] Cal. Gov't Code § 65583(f).

[41] Cal. Gov't Code § 65583(c);

[42] Cal. Gov't Code § 65400(a)(2)(B).

[43] Cal. Gov't Code § 65583(g)

9. Potential "Sanctions" for Failing to Meet Zoning Timeline

Any interested person may bring an action to compel compliance with the zoning deadline and requirements for the new 8-year housing element.[44] If a court finds that a local agency failed to complete the rezoning, the court is required to issue an order or judgment, after considering the equities of the circumstances presented by all parties, compelling the local government to complete the rezoning within 60 days or the earliest time consistent with public hearing notice requirements in existence at the time the action was filed. The court shall retain jurisdiction to ensure that its order or judgment is carried out. If the court determines that its order or judgment is not carried out, the court is required to issue further orders to ensure compliance and may impose sanctions on the local agency[45], but must consider the equities presented by all affected parties before doing so.

10. Adoption or Self Certification of Housing Element Remains the Same.

Although SB 375 changed the housing element planning period from 5 years to 8 years for some jurisdictions, and added time frames for completing certain actions which must be taken during the planning period, SB 375 did not change either the way in which the housing element is adopted except to the extent that the regional housing allocation plan must be consistent with the SCS. The RHNA process remains itself. Self-certification of the housing element remains an option (and triggers the three year requirement to zone).– SB 375 did nothing to alleviate the struggle that some cities and counties face in trying to plan for their entire RHNA except that HCD review of the housing element will occur less frequently for jurisdictions that move to an 8 year planning period.

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[44] Cal. Gov't Code § 65587.

[45] This provision is similar to the requirement to file an annual housing element report on form approved through the state rulemaking process. See Cal. Gov't Code § 65400(a)(2)(B). A local agency that fails to file such a report is subject to sanctions. Most agencies are not familiar with this provision, however, because HCD has not yet formally adopted the forms that would trigger this requirement (though a draft of such a form is posted on the HCD website—it has not yet been formally approved).

KEY DATES IN THE IMPLEMENTATION OF SB 375

December 31, 2008*	Projects specifically listed on a local ballot measure prior to this date are exempt from the requirement to be consistent with the SCS
January 1, 2009	CARB adopts Scoping Plan, which will include the total reduction of carbon in million metric tons from transportation planning
January 31, 2009	CARB shall appoint a Regional Targets Advisory Committee (RTAC) to recommend factors to be considered and methodologies to be used for setting reduction targets
June 1, 2009	MPOs in attainment areas and Regional Transportation Planning Agencies not within an MPO may elect to opt into the 8 year planning cycle.
September 30, 2009	RTAC must report its recommendations to the CARB
June 30, 2010	CARB must provide draft targets for each region to review
September 30, 2010	CARB must provide each affected region with a GHG emissions reductions target.
October 1, 2010	Beginning this date, MPOs updating their RTP will begin 8 year planning cycle that includes SCS-APS and alignment for the RHNA process.
December 31, 2010*	Transportation sales tax authorities need not change allocations approved by voters for categories of projects in a sales tax measure approved by voters prior to this date.
December 31, 2011	Federal Statewide Transportation Improvement Projects programmed before this date are exempt from the requirement to be consistent with the SCS

* *A project category is different from a specifically listed project insofar as a local initiative may authorize funding for a certain type of improvement without specifying a specific location.*

NEW RTP – RHA PLANNING CYCLE

(Highlighted, underlined provisions indicates new law. Plain text represents current law).

RHNA PROCESS	YEAR	RTP PROCESS
▪ HCD consults with COG regarding assumptions and methodology to be used to determine housing needs ▪ COG Develops Regional Growth Forecast ▪ COG conducts survey of its member jurisdictions ▪ HCD gives regional housing number to COGs ▪ COG develops methodology for distributing RHNA consistent with development pattern in SCS	**-2 to -1**	▪ MPO begins forecast process for RTP including involvement of broad stakeholder groups ▪ MPO holds informational meetings for local elected officials ▪ MPO circulates a draft SCS, and possibly a draft APS if needed, at least 55 days prior to final adoption ▪ MPO quantifies the reduced GhG emissions from SCS or APS ▪ MPO holds public hearings ▪ SCS is approved by MPO; APS may also be approved ▪ CARB agrees or disagrees with MPO's assessment that SCS or APS would, if implemented, achieve the GhG target
▪ COG distributes draft RHNA allocation consistent with SCS; every agency must within SCS must get some of the housing allocation.	**0**	▪ MPO adopts RTP that includes the SCS
▪ First six months, agencies may request COG reconsider allocation and file subsequent appeal ▪ Local agency starts drafting housing element ▪ Final RHNA allocation adopted by COG at 6 months ▪ Housing element due to HCD 18 months after local agency receives RHNA allocation (one year after final RHNA) ▪ Local agency must adopt housing element 120 days after statutory deadline to HCD to avoid a 4 year cycle; ▪ 90 days after receiving final comments on housing element from HCD, or date housing element adopted by local agency, 3 year time period to complete zoning of sites not within inventory begins ▪ Annual housing report with hearing to discuss	**1 to 3**	▪ Transportation investments are consistent with forecasted development pattern in SCS ▪ Projects that are consistent with the CARB approved APS/SCS are eligible for CEQA exemption and streamlining provisions ▪ MPO reviews and updates forecasts and assumptions in RTP (including SCS) for second RTP cycle
▪ Deadline to complete zoning of sites not within inventory if no extension applies; Failure to meet timeline can trigger court-imposed sanctions and new anti-NIMBY remedy ▪ New Anti-NIMBY provision applies to affordable housing projects on sites designated in the element program to be zoned at densities consistent with affordable housing (the "Mullin densities") but not yet zoned.	**4**	▪ MPO submits RTP that is consistent with the RHNA allocation four years earlier..
▪ Local agencies that did not file a timely housing element in year one must file another housing element that covers Years 5 through 8 of the planning period ▪ Local agencies that qualified for a one year extension are required to complete their zoning of sites not in inventory	**5**	
▪ HCD provides MPO with regional number for next 8 year cycle; COG begins process of developing next SCS/APS	**6**	▪ COGs begins forecast for next RTP planning cycle
▪ If agency has not zoned adequate sites in previous planning period, zone or rezone in 1st year of planning period unaccommodated portion of RHNA from previous period	**8**	▪ Possible "Analysis Year" – Fed regs require MPOs to include "analysis years" within RTP forecast period to take a hard look at its assumptions. The first analysis year is 5 to 10 years out. The 8 year RHNA cycle makes the 8th year a good analysis year for the fed regs.
Repeat Process		**Repeat Process**

KEY LEAGUE AMENDMENTS TO SB 375

Over the course of the SB 375 negotiations, the League identified a number of key amendments it required in order for the board to consider supporting it. This table summarizes many of those issues and explains the resulting outcome of the negotiations.

Issues	SB 375 March 24, 2008 Version	SB 375 Final Version
Restrictions on Transportation Funding?	Transportation investments within the RTP were based upon a set of assumptions about resource lands that did not necessarily reflect the content of local general plans.	The requirement for the SCS to identify resource lands is gone. Local officials on MPO boards retain discretion over the funding within RTP. If the SCS cannot achieve the regional GhG target, the region must create an APS that could achieve the GhG target. But the APS is not part of the RTP. Funding for projects must be consistent with the SCS, but not necessarily the APS.
Meaningful CEQA Relief?	CEQA provisions had several preconditions that made it unlikely that they would broadly applied	Contains two forms of CEQA relief. The first exempts residential projects from reviewing the impacts related to cars and light trucks on projects that are consistent with a plan to reduce GhGs from that source. The second is for defined infill projects near transit choices.
Mandatory Growth Allocations in SCS of Regional Transportation Plan?	Required MPOs to do mandatory and heavily prescribed growth management within the regional transportation plan (RTP), which came to be known as "concentric circle" planning	Mandatory growth management has been removed and the requirement in earlier drafts that a region "identify resource lands" has been changed to "gather and consider the best practically available scientific information about resource lands."
Sweeping Resource Land Definitions?	Resource definitions included new ambiguous terms.	The ambiguous environmental land definitions have been clarified to be consistent with current law.
Role for local officials in developing SCS?	None	MPO must adopt an outreach process that includes workshops for local elected officials in each county.
Local Participation Setting Regional GhG Reduction Targets?	Called for a top-down process for setting GHG targets that was unacceptable	Bill now contains a fair process for setting regional targets that includes a statewide advisory committee with League representation. CARB must hold workshops requirements in each region.
Confusion between existing federal laws and SB 375?	It was unclear how the new "Supplement," (now the APS) and the existing federal RTP requirements were related to each other.	Connection between the "Supplement" (now called the "Alternative Planning Strategy or APS)" which is required when a region's RTP cannot meet the regional targets) and the RTP; i.e., the land use pattern in the Alternative Planning Strategy will <u>not</u> affect or be part of the RTP or its funding.
RHNA Consistency and Extension?	The new goal of encouraging infill through transportation investments and the RTP (4 year cycle) directly conflicted with existing RHNA fair share goals (5-year cycle).	The bill achieves a three-year extension of the RHNA process (from 5 – 8 years), making it consistent with the RTP process of two four-year cycles. This achieves a major League goal.